## **UNITED STATES DISTRICT COURT** NORTHERN DISTRICT OF NEW YORK

DAVID PETERS,

Petitioner,

9:10-cv-116 (GLS/DEP)

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**SUPERINTENDENT of Sing Sing Correctional Facility,** 

Respondent.

**OF COUNSEL: APPEARANCES:** 

# FOR THE PETITIONER:

**David Peters** Pro Se 06-A-5776 Sing Sing Correctional Facility 354 Hunter Street Ossining, NY 10562

#### FOR THE RESPONDENT

HON. ERIC T. SCHNEIDERMAN PRISCILLA I. STEWARD
New York State Attorney General Assistant Attorney General **New York Office** 120 Broadway New York, NY 10271

Assistant Attorney General

Gary L. Sharpe **Chief Judge** 

### **MEMORANDUM-DECISION AND ORDER**

I. Introduction

Petitioner *pro se* David Peters brings this Petition for a Writ of *Habeas Corpus* pursuant to 28 U.S.C. § 2254, alleging that his current confinement in state custody is in violation of his federal constitutional rights. (Pet., Dkt. No. 1.) In a Report-Recommendation and Order (R&R) filed October 19, 2011, Magistrate Judge David E. Peebles recommended that the Petition be denied and dismissed in all respects.<sup>1</sup> (*See generally* R&R, Dkt. No. 11.) Pending are Peters' objections to the R&R. (*See* Dkt. No. 14.) For the reasons that follow, the R&R is adopted in its entirety.

#### II. Standard of Review

Before entering final judgment, this court routinely reviews all report and recommendation orders in cases it has referred to a magistrate judge. If a party has objected to specific elements of the magistrate judge's findings and recommendations, this court reviews those findings and recommendations *de novo*. *See Almonte v. N.Y. State Div. of Parole*, No. 04-cv-484, 2006 WL 149049, at \*6-7 (N.D.N.Y. Jan. 18, 2006). In those cases where no party has filed an objection, or only a vague or general objection has been filed, this court reviews the findings and

<sup>&</sup>lt;sup>1</sup> The Clerk is directed to append the R&R to this decision, and familiarity therewith is presumed.

recommendations of the magistrate judge for clear error. See id.

#### III. <u>Discussion</u>

Peters' "objections" consist of factual statements and legal citations which were already considered by Judge Peebles. (See Dkt. No. 14 at 3-7.) While Peters clearly believes the state courts erred, Judge Peebles found his assertions were either procedurally forfeited and/or lacked merit. (See R&R at 14-25.) As such, Peters' "objections" are insufficient to require a *de novo* review as there is no reference to a perceived error by Judge Peebles. Having found no clear error in the R&R, the court accepts and adopts Judge Peebles' R&R in its entirety.

### IV. Conclusion

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that Magistrate Judge David E. Peebles' October 19, 2011 Report-Recommendation and Order (Dkt. No. 11) is ADOPTED in its entirety; and it is further

ORDERED that Peters' Petition (Dkt. No. 1) is **DENIED** and **DISMISSED** in all respects; and it is further

**ORDERED** that the court **DECLINES** to issue a certificate of appealability; and it is further

ORDERED that the Clerk close this case; and it is further

ORDERED that the Clerk provide a copy of this Memorandum-

U.S. District Court

Decision and Order to the parties by mail and certified mail.

IT IS SO ORDERED.

January 23, 2012 Albany, New York

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